



February 5, 2019

**To:** Clients and Friends  
**From:** David F. Dulock  
**Subject:** Higher-priced Mortgage Loan Escrow Account Asset-size Exemption Threshold Increased for 2019

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In the February 4, 2019, issue of the *Federal Register* (84 FR 1356, [click here](#)) the CFPB revised comment 35(b)(2)(iii)-1.iii.E. of the Official Interpretations to §1026.35(b)(2)(iii)(C) of Regulation Z to reflect a change in the asset-size threshold for certain creditors to qualify for an exemption to the requirement to establish an escrow account for a higher-priced mortgage loan. For calendar year 2019, the asset-size threshold is increased to \$2.167 billion from \$2.112 billion. Therefore, a creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2018 has total assets of less than \$2.167 billion on December 31, 2018, is exempt, if the other requirements of §1026.35(b)(2)(iii) are also met, from establishing escrow accounts for higher-priced mortgage loans consummated in 2019, and for higher-priced mortgage loans consummated in 2020 for which the applications were received before April 1 of 2020.

The adjustment to the escrows asset-size exemption threshold will also increase the threshold for small-creditor portfolio and balloon-payment qualified mortgages under Regulation Z. The requirements for small-creditor portfolio qualified mortgages at §1026.43(e)(5)(i)(D) and the requirements for balloon-payment qualified mortgages at §1026.43(f)(1)(vi) reference the asset-size threshold in §1026.35(b)(2)(iii)(C). Likewise, under §1026.32(d)(1)(ii)(C), balloon-payment qualified mortgages that satisfy all applicable criteria in §1026.43(f)(1)(i) through (vi) and (f)(2), including being made by creditors that have (together with certain affiliates) total assets below the asset-size threshold in §1026.35(b)(2)(iii)(C), are also exempt from the prohibition on balloon payments for high-cost mortgages.

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